

CHAPTER 11

Police

Part A INVESTIGATION

1. Relation between Police and Magistrate—Chapter XIV of the Code of Criminal Procedure contains the provisions of the law regarding information to the Police and their powers to investigate and the relation of the Police to the Magistrate are therein defined.

2. Police can investigate *suo motu* only cognizable cases—It may, in the first place, be pointed out that the Police have power to investigate *suo motu* only cognizable offences as defined in Section 4(f) of the Code; but under Section 202 a Magistrate may, where he sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognizance, direct a local investigation to be made by a Police Officer (or other person). The limitations on this power of reference which are described in the instructions as to the examination of complainants should be strictly observed by Magistrates (*vide* Chapter 1-B, paragraph 4).

3. Police to record information in non-cognizable cases also—Section 154 requires that every information to an officer-in-charge of a Police Station relating to the commission of a cognizable offence shall be reduced to writing, and action taken on it under Sections 156 and 157, When the information relates to the commission of a non-cognizable offence, the substance of it shall be referred to the Magistrate. No Police Officer may, without the express order of a duly empowered Magistrate, investigate an offence not cognizable by the Police [Section 155 (2)].

4. (1) Sections 156 to 158 lay down the procedure to be followed by the Police on receipt of information relating to the commission of a cognizable offence and provide for the submission of reports of such information to the Magistrate having jurisdiction.

(2) The following procedure should be followed in regard to F.I.R. in murder cases—

(i) The F.I.R. in murder cases should be sent to the Magistrate concerned immediately in his Court during Court hours and at his residence thereafter.

(ii) In case the Magistrate concerned is out of station, the F.I.R. in a murder case should be submitted to the duty Magistrate.

(iii) If the Magistrate is not available after Court hours, the copy of the F.I.R. should be left at his house by the messenger noting the date and hour of delivery on the cover containing the F.I.R. and the Magistrate should attach the cover with the contents.

(iv) If on account of difficulties of communication or other causes the delivery is delayed, the reasons and delay should be noted on the cover.

(v) As soon as the F.I.R. in murder cases is received by a Magistrate, he should affix his initials thereto and note thereon the date and hour at which the report has been received by him. In the case of a delayed F.I.R., if he disagrees with the reasons given by the Police Officer for such delay, he should also give his own reasons for the same, if any.

(vi) In cases where the Police Station is not situated in the same place where the Magistrate resides or where the Police Station is situated in an out-of-the-way place, the carbon copy of the F.I.R., after it has been recorded, should be posted at once at the nearest post office, addressed to the Magistrate by name, before the first clearance of the *dak*. In such cases the Magistrate should check that the F.I.R. has been despatched by the earliest post after its registration in the Police Station as shown by the time recorded on it.

(3) The following is an extract from Rule 22.48 of Chapter XXII of the Punjab Police Rules, Volume III, which prescribes the maintenance of a Daily Station Diary in accordance with Section 44 of the Police Act 1861 :

“It shall be in Form 22.48 (1) and shall be maintained by means of the carbon copying process. There shall be two copies. One will remain in the Police Station register and the other shall be despatched to the Superintendent or a Gazetted Officer designated by the latter every day at the hour fixed in this behalf.

“The Superintendent shall fix the hours at which station diaries shall be daily closed.

(4) Rules 24(4)(1) and (2) of Chapter XXIV of the Punjab Police Rules, Volume III, runs as follows—

“(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a Police Station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant if any, the fact that he will not investigate the case or cause it to be investigated.

(2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated, he shall pass an order to that effect and shall, in any case, send on the diary or an extract therefrom to the District Magistrate for his perusal and orders.

5. (i) The following opinion, which was expressed by the Chief Court of the Punjab extra-judicially on two points connected with the recording of reports made to the Police in cognizable cases, and the power of Magistrates to order the Police to investigate such cases, is, at the request of the State Government, published for the information of the Criminal Courts of the Punjab.

(ii) *Distinction between recording of reports under Sections 154 and 157, Criminal Procedure Code*—The first point was whether a distinction is to be drawn between Section 154 and Section 157 of the Code of Criminal Procedure in regard to the recording of reports made to the Police in cognizable cases. On this point the Chief Court was of opinion that whereas every information covered by Section 154 must be reduced to writing as provided in that section, it is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the Police officer to whom it is given, which compels action under Section 157, although, of course, a report would be sent to the Magistrate.

(iii) *Magistrate bound to entertain complaint of cognizable offence made to him directly*—The second question was, whether a Magistrate can refuse to take cognizance of a complaint which has been duly made to him, on the ground that it relates to an offence cognizable by the Police, and should, therefore, have been made to the Police and not to himself, and whether, either without or after taking cognizance, a Magistrate can properly order the Police to investigate such a case.

As regards the matter of taking cognizance the Chief (now High) Court was of opinion that a Magistrate cannot refuse, when properly called on to do so, to exercise jurisdiction merely on the ground that the complainant might reasonably have had recourse to the Police instead of to the Magistrate.

(iv) *Investigation by Police after the Magistrate has taken cognizance*—As to whether a Magistrate after having taken cognizance may not properly call on the Police to assist in investigating the case, the Chief (now High) Court was of opinion that a Magistrate who has taken cognizance under Section 190(1)(a), of an offence cognizable by the Police, may, after complying with the provisions of Section 200, and issuing his process (if he sees no reason for doubting the truth of the complaint and otherwise finds sufficient grounds for proceedings), give information of the case to the Police Officer having jurisdiction, with a view to his further investigating its facts and circumstances in the manner laid down in Section 157. In such a case, as is contemplated, the Police officer would not have to take measures for the discovery and arrest of the offender, as the supposed offender would be known, and a process would have been issued by the Magistrate to compel his appearance ; but in other respects it would rest with him to take steps to secure the case being properly brought before the Court, and he would be responsible that the witnesses named by the complainant to the Magistrate were supplemented by any others who might be necessary to complete the case for the prosecution.

6. Procedure to be adopted by Magistrate when offender is not known to the complainant—The foregoing remarks proceed on the assumption that the complainant to the Magistrate knows, or thinks he knows, who has injured him. In cases of complaint of a cognizable offence against an unknown offender, the Magistrate would have to record, under Section 203, that there were in his judgment no sufficient grounds for proceeding. It would also

be open to him to communicate to the Police the information supplied to him, or to leave it to the complainant either to apply to the Police or to take such other measures as he thought proper for discovering the offender.

7. Procedure of Police when there is or is not sufficient evidence against the accused—Section 169 of the Code of Criminal Procedure provides that if in an investigation under Chapter XIV the Police Officer finds that there is not sufficient evidence to justify the forwarding of the accused to a Magistrate, he shall release the accused on bail or recognizance, and shall submit a report through the proper officer (Section 173), for the order of the Magistrate having jurisdiction.

If, on the other hand, the evidence appears sufficient the Police officer must forward the accused under custody, or on bail, if the offence is bailable, to the Magistrate having jurisdiction (Section 170).

8. Police cannot detain in custody an accused for more than 24 hours without orders of Magistrate—Section 61 of the Code provides that no Police Officer shall, under any circumstances, in the absence of a special order of a Magistrate under Section 167, detain in custody a person arrested without warrant for a longer period than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

9. Police remands—When it appears that the investigation by the Police cannot be completed within the period of twenty-four hours and there are grounds for believing that the accusation is well founded, the Police Officer must forward the accused to the nearest Magistrates, and also transmit a copy of the entries relating to the case in the diary of the Police Station. The Magistrate before whom the accused is brought may, whether he has or has not jurisdiction, authorise the detention of the accused in such custody as he thinks fit for a period not exceeding fifteen days. If he has not jurisdiction in the case, and considers such further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. [Section 167(1)].

10. Procedure of Magistrate granting remand—A Magistrate authorising the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub-Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate. (Section 167). The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.

11. Arrest by Police to be reported. When Police may discharge persons once arrested—Sections 62 and 63 require that Police Officers shall report to the Magistrate of the district or, if he so directs to the Magistrate of the division of a district the cases of all person apprehended without a warrant within the limits of their respective stations, whether such persons shall have been admitted to bail or otherwise, and that no person who has been apprehended shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

12. Control of Magistrate over arrests by the Police—The object of these sections is that the Magistrates should promptly exercise authority, if necessary, with regard to all arrests by the

Police; and they seem to have been framed with this view that as no person can be released without the order of a Magistrate, except on bail or recognizance, the Magistrate should be responsible as well as the Police if a person illegally arrested remains unnecessarily in custody.

13. Police diary to be kept and sent up regularly—Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to the inspection of these diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.

[14. Duty of Magistrates to Supervise Police investigation—Magistrates are bound to see that the provisions of the Code are attended to, any departmental practices notwithstanding. The law has provided that the Magistrate should either expressly order (Section 202), or receive immediate intimation of (Section 157) every criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise. Every First Information Report received by a Magistrate of the 1st Class under Section 157 of the Code shall be entered in Registers No. XXIII and XXIV of First Information Reports prescribed in Rules and Orders of the High Court, Volume VI, Part B. The Magistrate concerned shall see that these registers are maintained by the Ahlmad attached to his Court properly and every entry pertaining thereto is correct. He shall also ensure the observance of the following instructions with regard to the maintenance of both the aforesaid registers:—

1. Two separate registers. No. XXIII and XXIV, should be kept for each police station to avoid confusion.
2. The date and time of the receipt should be entered in the copy of the First Information Report by the Magistrate in his own hand and signed or initialled immediately on receipt of the same, and this should not be left to the ministerial staff.
3. Entries in registers should be made according to serial number of the First Information Report. If a later 'First Information Report' is received and the earlier one is not forthcoming, the column for the entry of earlier report should be left blank and a reminder issued to the Station House Officer concerned. In this way one can find at a glance the numbers of the First Information Reports which may not be forthcoming on a particular date.
4. The dates of presentation of challans and registration of case should invariably be entered in Register No. XXIV in the relevant column.
5. The registers should be inspected by the presiding Officer at least once a month to ensure their proper maintenance and be signed by him in token of having done so.]

15. Magistrate must have among his own records the means to supply statistical information—From the quarterly statistical returns it sometimes transpires that the Magistrate is

not informed of the number of persons arrested by the Police during the month. If the points above alluded to are properly attended to, the Magistrate must have *among his own records* the means to supply the statistical information ; for the reports severally made to him of intimation of the occurrence of an offence (Section 157), of there being no sufficient evidence (Section 169), of there being sufficient evidence (Section 170), must be in writing, and, whatever may be the mode of communication with the Police, must leave a trace in the Magistrate's office sufficient to enable the statistical writer to make out his returns.

16. Police to send to the Magistrate copies of records made under Section 165, Cr. P.C.—Magistrates of districts should also insist on the Police authorities adhering closely to the law laid down in Sections 161 to 163 and 165 of the Code of Criminal Procedure. They should see that the Police forthwith sends to the nearest Magistrate, empowered to take cognizance of the offences, copies of any record made under sub-section (1) or (3) of Section 165 of the Criminal Procedure Code at the time of making search.

17. Power of Police to summon witnesses and to arrest offenders—The issuing of a warrant or summons, properly so called, in criminal cases, is the prerogative of the Magistrate only and not of a Police Officer, as such is to bear either of these designations; but under Section 160, any Police Officer making an investigation under Chapter XIV may by 'order in writing' require the attendance of any person who appears to be acquainted with the circumstances of the case, and such person shall be bound to attend. In view of the proviso recently inserted by Act No. 26 of 1955, no male person below the age of fifteen years or a woman can be required by the Police Officer to attend at a place other than his or her residence.

The arrest of an accused may also be effected by a Police Officer of any rank to whom an order in writing has been issued by the officer-in-charge of the police station; but such processes are never, either officially or in common parlance, to be called 'warrants' or 'summons'.

Part B REMANDS TO POLICE CUSTODY

1. Introductory—The following instructions on the subject of remands to Police custody have been issued by the High Court.

2. Distinction between remand to Police custody and remand to judicial lock-up—Magistrates should observe the great distinction between a remand to Police Custody and an ordinary remand to the Magistrate's lock-up under Section 344 of the adjournment of an inquiry or trial owing to the absence of a witness or from any other reasonable cause.

3. Non-completion of Police investigation does not justify detention by Police—The non-completion of the enquiry or trial justifies the latter, but the former requires something more, as it is expressly provided by Section 167 that the non-completion of the investigation shall not, in the absence of a special order of a Magistrate be deemed to be a sufficient case for the detention of an accused person by the Police.

Magistrates should ensure that whenever a person arrested and detained in custody is produced before them by the police for a remand, the police places before them copies of the first information report and the *Zimnis* and other necessary papers as required by sub-section (1) of Section 167. The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.

4. Remand to be granted in cases of real necessity—Ordinarily when an investigation is incomplete the proper course is for the accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible and then adjourned for further evidence. In the opinion of the High Court a remand to Police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out properly or otherwise assist the Police in elucidating the case.

5. Magistrate should discourage tendency of Police to take remand to extort confession—The Police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to Section 163 and the following section of the Code of Criminal Procedure, and to the spirit of the Code generally; and Magistrates must be careful not to facilitate this object by too great a readiness in granting remands.

6. Remand cannot be granted for more than 15 days. Procedure when accused is brought before a Magistrate to obtain remand—It should be further remembered that remands to Police custody cannot be granted under the Code of Criminal Procedure, for a longer period than 15 days altogether, and cannot be granted at all by a Magistrate of the third class, or by a Magistrate of the second class not specially empowered by the State Government. When an accused is brought before a Magistrate in accordance with Section 167, sub-section (1), Code of Criminal Procedure, the Magistrate must adopt one of the following courses:

(1) If he has jurisdiction to try the case or commit it for trial, either

(a) Discharge the accused at once, on the ground that there is no cause shown for further detention, or

(b) Remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term, if less than 15 days, may subsequently be extended up to the limit of 15 days in all, or

(c) Proceed at once to try the accused himself, or hold an inquiry with a view to committing him for trial, or

(d) If for any reason it seems necessary, forward the accused at once to the District or Sub-Divisional Magistrate to whom he is subordinate, or

(e) If himself a District or Sub-Divisional Magistrate, send the accused to a competent subordinate Magistrate for trial of commitment.

(2) If he has not jurisdiction to try the accused or commit him for trial, he must either—

(a) If he thinks there is no ground for further detention, at once send the accused to a Magistrate having jurisdiction, with a view to his trial or discharge, or

(b) If he thinks there is ground for further detention, remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit for a term not exceeding 15 days, which term, if less than 15 days, may subsequently be extended, up to the limit of 15 days in all.

Note—By Punjab Government Notification No. 11984, dated 16th April, 1924, all stipendiary Magistrates of the 2nd class have been invested with power to authorise the detention of accused persons in the custody of the Police under Section 167 (2) of the Code of Criminal Procedure as amended by Act XVIII of 1923.

7. Accused must be produced before the Magistrate who should satisfy himself about necessity for remand—Before making an order of remand to Police custody under Section 167 of the Code of Criminal Procedure the Magistrate should satisfy himself that—

(1) There are grounds for believing that the accusation against the person sent up by the Police is well founded;

(2) There are good and sufficient reasons for remanding the accused to Police custody instead of detaining him in magisterial custody.

In order to form an opinion as to the necessity or otherwise of the remand applied for by the Police, the Magistrate should examine the copies of the diaries submitted under Section 167 and ascertain what previous orders (if any), have been made in the case, and the longer the accused person has been in custody the stronger should be the grounds required for a further remand to police custody.

The accused person must always be produced before the Magistrate when a remand is asked for.

8. Principles applying remand cases—The following principles are laid down for the guidance of Magistrates in the matter of granting remands and District Magistrates (or in the districts in which the experiment of separation of the Executive from the Judiciary is being tried the Additional District Magistrates) are required to see that they are carefully applied :

(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible.

(iii) In all ordinary cases in which time is required by the Police to complete the enquiry the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the prisoner's statement, he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purpose named in the application. If an accused person, who has been produced for the purpose of making a confession has declined to make a confession or **has** made a statement which is unsatisfactory from the point of the prosecution, he should be remanded to Police custody.

9. Reasons for grant of remand to be recorded and copy sent to District Magistrate—In any case when an accused person is remanded to Police custody, the reasons must be recorded in the order of remand, and when the Magistrate ordering a remand is not himself a Sub-Divisional or District Magistrate he must at once send a copy of his order, with his reasons for making it to the Sub-Divisional or District Magistrate to whom he is immediately subordinate. [Section 167(4)].

10. Procedure when a remand for more than 15 days is required for completion of the case—If the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the procedure to be adopted is that laid down in Section 344, Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each, and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order.

COMMENTS

Paragraph 10 does not require that a charge-sheet must be submitted or cognizance taken by Magistrate before he can remand on accused to custody under Section 344 of Criminal Procedure Code. *Ajit Singh and another v. The State*, AIR 1970 Delhi 154.

11. District and Sub-Divisional Magistrates should take measures to exercise strict supervision over the action of all Magistrates subordinate to them, in regard to the granting of remands under Section 167 of the Code of Criminal Procedure, and, as these officers receive the reports made under the last clause of that section, they possess the means for exercising the supervision here required of them without any difficulty. The District and Sub-Divisional Magistrates should further arrange that the Duty Magistrate should attend office, at specified hours on public holidays, for disposal of such applications for remand as may be placed before him.

Note—In district in which the experiments of separation of the Executive from the Judiciary is being tried, this supervision and control over the Judicial Magistrates will be exercised by the Additional District Magistrates.

12. Before the grant of remand accused should be heard and allowed to engage a counsel—

(i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates in regard to remands (*Punjab Government circular Letter No. 6091-J-36/39829 (H.—Judl.), dated the 19th December, 1936, at all District Magistrates in the Punjab*).

(a) Before a remand is granted in any case, the Magistrate should inform the accused that he is a Magistrate and that a remand has been applied, for and he should ask the accused whether he has any objection to offer to the remand. The order granting the remand should be written at the time it is announced, in the presence of the accused.

(b) If the accused wishes to be represented by counsel, the Magistrate should allow time for counsel to appear and argue the matter before him. He may grant a temporary remand in such circumstances until arguments have been heard.

(ii) *Right of accused to access to counsel and friends*—The Punjab Government have issued the following instruction in regard to the right of accused to access to counsel and friends :—

An accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Information regarding his place of confinement should at all times be given to his friends on their application, and the prisoner himself should be informed that he is entitled to have the assistance of counsel and to communicate with his relations and friends.

Part C
IDENTIFICATION PARADES

1. Instructions issued by the Punjab Government re-identification parades—The following instructions have been issued by the Punjab Government for the guidance of Magistrates in their conduct of identification parades (*Punjab Government Circular Letter No. 6091-J. 36/39829 (H. Judl.), dated the 19th December, 1936, to all District Magistrates in the Punjab*).

(1) *List of all persons included in the parade should be prepared*—The Magistrate in charge of an identification parade, should prepare a list of all persons, including the accused, who form part of the parade. This list should contain the parentage, address and occupation of each member of the parade.

(2) *Note about identification by witnesses*—When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified. A note should also be made if the witness identifies a person wrongly; in such a case it is incorrect to note that the witness identified nobody. All persons identified must be mentioned, whether the identification is right or wrong. If a witness, on being called for the purpose, states that he cannot make any identification, a note should be recorded by the Magistrate to this effect.

(3) *Objection or statement by accused or identification witnesses to be recorded and power of Magistrate to decide objections*—Should the accused make any complaint or statement it should be recorded by the Magistrate. If from his personal knowledge the Magistrate is able to decide beyond doubt that the complaint is false or futile, a note to this effect should be made, but in

other cases it is advisable to leave any decision as to the value to be attached to the objection to the Court trying the case. The Magistrate should also record any statement made by a witness before making an identification.

(4) *Duty of Magistrate to records precautions taken and to note other points*—The Magistrate should state—

(a) What precautions he has taken to ensure—

(i) that the witnesses do not see the person to be identified by them before the identification proceedings commence;

(ii) that no communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and

(iii) that after making identification the witnesses do not communicate with other witnesses who have yet to do so;

(b) Whether the person to be identified is handcuffed or is wearing fetters; and if so, whether or not other persons taking part in the parade are handcuffed or are wearing fetters, and also whether or not they are inmates of the Jail.

(5) *Form of certificate to be appended by the Magistrate*—At the end the Magistrate should append a certificate in the following form :

Identification Parade

The State *versus*

(F.I.R. No of 19

Police Station)

Parade held on the 19 in the

Jail by Magistrate Class District for the identification of
. on the application of

Names of the witnesses who are expected to identify the prisoner, with their particulars:

- 1.
- 2.
- 3.

Proceedings of the Magistrate

Certified that the above is a true and correct record of my proceedings.

(Sd.)

(Seal) Magistrate, Class

2. The following further instructions have been issued by the Punjab Government on the subject) [*Punjab Government circular Letter No. 6546-J-43/83844 (H.—Judl.), dated the 17th December, 1943, to all District Magistrates in the Punjab*].

In cases where the identification of the accused is disputed and is a matter of importance, the request of an accused for an identification parade should not be refused. Such a request should not also be rejected merely because it is regarded as a measure to create delay, as it should be possible to arrange an identification parade without delay. Again, a request to hold such a parade should not be refused on the ground that it is some considerable time since the witnesses last saw the accused and the accused may have changed in appearance in the meantime, and in such cases in his report on the parade the Magistrate can record when the witnesses did see the accused last.

3. In district in which the experiment of separation of judiciary from the executive is being tried, the work relating to the holding of identification parades should be done by the Judicial Magistrates.

(*Punjab Government Letter No. 16848-G-55/11327, dated 16th February, 1956, to all Deputy Commissioners in Punjab*).

Part D

CANCELLATION OF CASES REPORTED BY POLICE

1. Magistrate's power to cancel cases reported by Police—In regard to cognizable cases reported by the Police to the Magistrate having jurisdiction under Sections 157 and 173 of the Code of Criminal Procedure, it frequently becomes evident either (a) that the offence committed was really non-cognizable, or (b) that the information given to the Police was false or unfounded, and the Police apply for magisterial authority to show such cases as “non-cognizable” or “false” as the case may be. The Magistrate dealing with the Police reports in such cases, that is, ordinarily, the Magistrate who is empowered to take cognizance of the offence upon Police report, in respect of the particular Police Station, under Section 159 or Section 173 of the Code of Criminal Procedure, as the case may be, may for sufficient reasons, pass an order accordingly.

2. Duty of Magistrate to satisfy himself before passing order—Magistrates are not required to give reasons for either granting or refusing the Police application, and they should exercise their discretion freely after satisfying themselves as to the grounds on which it is made. They should not treat the matter as one of ordinary routine.

3. Magistrate dealing with the final Police report is competent to pass order—In the event of the first and final report not coming before the same officer, the Magistrate dealing with the final Police report would be competent to pass the order.

4. Order of cancellation : When to be passed and by whom—No Magistrate of the 2nd or 3rd class is competent to make such an order, but any Magistrate of the 1st class may do so. Such an order should only be made at the time of dealing with the Police reports. No applications from the Police for a direction of this character should be entertained if made otherwise than in the final report submitted under Section 173 of the Code of Criminal Procedure. But any Magistrate of the 1st, 2nd or 3rd class, may, of his own motion, in the course of trying any case reported by the Police as cognizable, pass such an order at any stage of the proceedings, before or at the time of delivering judgment intimation of the order being given to the Police.

Part E

CUSTODY OF PROPERTY SENT IN BY THE POLICE

1. Kinds of property sent in by Police—Property sent in by the Police is usually of three kinds :

(i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds, etc., and (b) implements, such as, dyes, moulds, etc., used in the forgery of currency notes, transmitted to the Magistrate, under Section 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.

(ii) Property seized by the Police as stolen property or upon suspicion, and ordered by, the Magistrate, under Section 523 of the Code of Criminal Procedure [Section 457 of new Code] to be forwarded to headquarters.

(iii) Property taken charge of by the Police under Section 25 of the Police Act, (Act V of 1861), and ordered by the Magistrate of the districts to be forwarded to headquarters.

2. Custody and disposal of the property—(a) With regard to property referred to in Rule (1)(i) above, other than articles enumerated in (a) and (b) the Police Department will retain charge of it pending the disposal of the case. When the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody or otherwise disposed of, as the Magistrate may direct.

(b) Articles enumerated in 1 (i)(a) above will remain in the custody of the Police Department pending the disposal of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall send them to the treasury or Sub-Treasury together with a short description of the case; and

(c) Articles enumerated in 1 (i) (b) above produced in and confiscated by a Court shall remain in the custody of the Police Department during the trial of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall make the articles over to the Police Department for their destruction or for such other action as may be found suitable in accordance with the rules of that department.

3. Custody and disposal of the property—Property of the second kind, when sent in to headquarters, will remain in the custody of the Police until the Magistrate makes an order for the issue of a proclamation under Section 523 of the Code of Criminal Procedure [Section 457 of new Code] when it should be transferred to the custody of the Nazir or otherwise disposed of as the Magistrate may direct.

4. Custody and disposal of the property—Property of the third kind should on arrival at headquarters be made over at once to the Nazir by the Police Department.

5. Custody of coins, currency notes, etc.—In any individual case where the property consists of bullion, coin, currency notes, valuable securities or jewels, and is of great value, say, above one thousand rupees, it should instead of being made over, under the preceding rules to the Nazir, be made over the Treasury Officer; coin or currency notes (other than counterfeit coin and notes) will be treated as regular deposits, bullion at its estimated value in cash, and securities, irrespective of their face value, and jewels will be deposited for safe custody, and an entry made not in the ordinary register, but in a special register which should be countersigned every month by the Deputy Commissioner. The orders of the Deputy Commissioner should first be obtained by the Police before placing bullion or jewellery, etc., for safe custody at the Treasury.

6. Responsibility of Police for safe custody—Until the property is, under the preceding rules, made over to the Nazir or the Treasury, the Police Department will continue to be responsible for its safe custody. When so made over, the responsibility for its safe custody will rest with the Nazir and Treasury, as the case may be.

Part F

INSPECTION BY POLICE OFFICERS OF RECORDS AND ORDERS AFFECTING THE WORKING OF THE POLICE

1. Inspection by Police Officers of the record of criminal cases in which a member of the Police is convicted or left under suspicion—District Magistrates are instructed to permit Superintendents of Police to peruse the proceedings and evidence in all criminal cases in which a member of the Police force is either sentenced to punishment, or though acquitted, is left under suspicion or severally censured. The object is not to question the correctness of the decision of the Magistrate, but to enable the police to take such departmental action as may appear necessary.

2. Copies of certain confessions to be sent to Inspector-General of Police—Copies of all confessions which may be valuable from a Police point of view, as inculcating accomplices, should be forwarded to the office of the Inspector-General of Police for record.

3. All modifications of the lower Court made in appeal, revision, or reference should be communicated to the Superintendent Police—At the request of the Inspector-General of Police the High Court is pleased to direct that intimation shall always be given to the Court Inspector of the District Magistrate's Court, for communication to the Superintendent of Police

of all modifications made by a Court of Appeal, Revision or Reference is an order passed by a Court of Original Criminal jurisdiction.

Note—As copies of all such orders (except orders passed in appeal by a Subordinate Magistrate invested with criminal appellate powers for the communication of which special provision should be made) are sent to District Magistrates, the above direction can be carried out without difficulty.

Part G

INFORMATION OF CONVICTION IN COMPLAINT CASES TO BE FURNISHED TO THE POLICE

1. Information of convictions in certain cases to be sent to Police—Magistrates are required to furnish the Police with information as to convictions in all cases taken up by them on complaint under the Acts noted below.

I. Indian Penal Code

Chapter XI

Sections 193 to 195 — Giving or fabricating false evidence.

Sections 211 to 377 — False charge of committing an unnatural offence.

Chapter XII

Sections 231 to 232 — Counterfeiting of coin.

Sections 233 to 235 — Making, buying, selling or having in possession of instruments or material for counterfeiting coin.

Section 236 — Abetting the counterfeiting of coin out of India.

Sections 237 to 238 — Import or export of counterfeit coins.

Sections 239, 240, 242, 243 — Possession of delivery of counterfeit coin.

Section 244 — Unlawful alteration of weight or composition of coin by persons employed in Mints.

Section 245 — Unlawful removal of coining instruments from Mints.

Sections 246 to 253 — Unlawful alteration of weight, composition or appearance of coin and possession and delivery of such coin

Section 255 — Counterfeiting of Government stamps.

Sections 256 to 257 — Making, buying, selling or having in possession instruments or material for counterfeiting Government stamps.

Sections 258 to 259 — Possession or sale or counterfeit Government stamps.

Section 260 — Using of counterfeit stamps.

Sections 261 to 263 — Fraudulent effacement or erasure of Government stamps.

Chapter XVI

Section 311 — Being a thag.

Section 354 — Indecent assault on a woman.

Sections 363 to 369 — Kidnapping.

Section 376 — Rape.

Section 377 — Unnatural offence.

Chapter XVII

Sections 379 to 382 — Thefts of all kinds.

Sections 384, 386 to 389 — Extortion of all kinds, except Section 385.

Sections 392 to 394, 397, — Robbery of all kinds.

and 398

Sections 395, 396, 399, 402 — Dacoity of all kinds.

Sections 400 to 401 — Belonging to a gang of thieves of dacoits.

Section 404 — Dishonest misappropriation of property belonging to a deceased person.

Sections 406 to 408 — Criminal breach of trust.

Section 409 — Criminal breach of trust by public servant.

Sections 411 to 414 — Receiving stolen property.

Sections 418 to 420 — Cheating of all kinds, except simple cheating, Section 417.

Sections 429 to 433 and — Serious mischief.

435 to 440

Sections 449 to 452 — House-trespass in order to commit an offence.

Sections 454 to 458 — Lurking house-trespass or house breaking other than simple, Section 453.

Sections 459 and 460 — Grievous hurt or death caused in house-breaking.

Section 461 — Dishonestly breaking upon a closed receptacle.

Section 462 — Fraudulently opening a closed receptacle held in trust.

Sections 465 to 469 — Forgery.

Chapter XVIII

Section 489-A to 489-D — Forgery of currency notes and bank notes.

II. Code of Criminal Procedure

Chapter VIII

Sections 109 and 110 — Bad livelihood.

III. Miscellaneous Acts

Sections 3 and 4, Act III of — Gambling.

1867

Section 9, Act 1 of 1878 — Opium smuggling.

Indian Arms Acts, XI of 1878, as amended by Act XII of 1891. Punjab Habitual Offenders (Control and Reform) Act, 1952. (Punjab Act XII of 1952).

IV. Other Offences

All offences in cases in which the subsequent proof of the conviction so recorded would render the person convicted liable by law to enhanced punishment on subsequent conviction of the same or a similar offence by reason of the proof of such former conviction, and all offences in which, upon such proof, the law establishes a presumption in favour of the prosecution.

Illustration—(a) Offences under Section 8 of the Stage Carriages Act (XVI of 1861), shall be so entered because an enhanced punishment is provided for every subsequent conviction.

(b) Offences against rules made by the State Government under Section 41 of 1878 (The Indian Forest Act) by reasons of the provisions of the last clause of paragraph 2 of Section 42 of the same Act.

(c) Offences under Section 13 of Act II of 1924 (The Cantonment Act).

Note—Convictions for theft by Court martial, although the persons convicted have not been sent up for trial or prosecuted by the Police, shall also be entered in the conviction registers in all cases in which the convictions are intimated to the Civil Authorities.

2. Form of statement prescribed for such information—A form of the statement to be furnished to the Police is attached hereto.

3. Filling up of the form—In Courts where there is a Court Inspector or Assistant Court Inspector, this official shall be held responsible for filling up the form in question, and Magistrates will only be required to sign it. In other Courts, Magistrates will, after filling up the form, send it to the officer-in-charge of the nearest Police Station.

4. Indent for forms—Printed forms in English for these statements should be indented for in the usual way. The supply of vernacular forms should be arranged for by District Magistrates.

Statement showing cases taken up by Magistrates on complaint under sections of the Indian Penal Code and other Acts of which the Police Department maintains a record, where such cases end in conviction

District in which trial is held	Name, parentage, caste, residence and occupation of person	Offence of which convinced	Sentence	Date of sentence	Name and powers of Magistrate	Remarks
1	2	3	4	5	6	7

Part H
MISCELLANEOUS

1. Cases against Police officers—For cases against Police officers *See* Chapter 6,—”Cases against Government Servants and Soldiers.”

2. Police reports sent to Magistrates through a superior Police Officer—The following notification of the State Government is published for information:

Punjab Government Notification No. 77, dated the 26th April, 1883

In accordance with the provisions of Sections 157, 158 and 173 of the Code of Criminal Procedure, the Punjab Government is pleased to direct as follows :

The following reports sent to Magistrates shall be submitted through a superior officer of Police:

(a) Information reports or charge registers, under Section 157, in all cases in which the Police have abstained from investigation;

(b) Completion reports, including charge sheets, under Section 173, in all cases in which no person is sent up for trial and whether any person has been arrested or not; and

(c) Completion reports, including charge sheets, under Section 173, in all cases sent for trial at the headquarters of district.

The following officers of Police shall be deemed to be “superior officers” within the meaning of these rules :

Under clauses (a) and (b), the Superintendent of Police; and when the Superintendent of Police is unable to receive such reports, an Assistant Superintendent of Police, and when Superintendent of Police and Assistant Superintendent of Police is unable to receive such reports, an Inspector of Police.

Under Clause (c), the Superintendent of Police, and in his absence, an Assistant Superintendent of Police, and in the absence of the Superintendent of Police and the Assistant Superintendent of Police, an Inspector of Police.

3. Copy of judgment criticising conduct of Police to be sent to higher authorities—For transmission of a copy of judgment in which the conduct of the Police is criticised to higher authorities *see* Chapter 1-H, paragraph 6.

1. Substituted *vide* C.S. No. 8-Rules/XII-F-2, dated 22-11-1965.